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28      *Attorneys for Plaintiff City of Spokane*

1           **UNITED STATES DISTRICT COURT**  
2           **EASTERN DISTRICT OF WASHINGTON**

3           CITY OF SPOKANE, a municipal  
4       corporation located in the County of  
5       Spokane, State of Washington,

6           Plaintiff,

7       v.

8           MONSANTO COMPANY, SOUTIA  
9       INC., and PHARMACIA  
10      CORPORATION, and DOES 1 through  
11      100.

12      Defendants.

13      Case No.: 2:15-cv-00201-SMJ

14           **PLAINTIFFS' RESPONSE TO**  
15           **DEFENDANTS' STATEMENT OF**  
16           **DISPUTED MATERIAL FACTS AND**  
17           **COUNTER-STATEMENT OF**  
18           **MATERIAL FACTS (ECF NO. 527)**

1 Plaintiff submits the following in response to Defendants Monsanto Company,  
2 Solutia Inc., and Pharmacia LLC (collectively “Monsanto”) Statement of Disputed  
3 Material Facts and Counterstatement of Material Undisputed Fact, ECF No. 527.  
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5 <b>Defendants’ Counter Statement 6 of Undisputed Material Fact</b>	7 <b>Defendant’s 8 Supporting 9 Evidence</b>	10 <b>Plaintiff’s Response</b>
11 1. Under the National 12 Pollutant Discharge Elimination 13 System (“NPDES”), Washington 14 State may issue two types 15 of permits to control discharge into the Spokane River: individual permits and general permits. Individual permits are permits for a specific discharge at a specific location. General permits are permits for a group of similar discharges at diverse locations.	16 Declaration of Alan 17 Y. Wong in support 18 of Defendants’ Counter- Statement of 19 Material Undisputed Facts 20 (“Wong Decl.”), Ex. 1 at 1 (NPDES Permits 101	21 Not disputed that the State of 22 Washington may issue 23 general or individual permits. Not disputed as to the descriptions of general and individual permits.
24 2. The following non- 25 governmental entities discharge into the Spokane River pursuant to an individual NPDES permit: Kaiser Aluminum, Inland Empire Paper, and the Midnite Mine site of Dawn Mining Company.	26 <i>See generally</i> Wong Decl., Ex. 2 (Kaiser Aluminum NPDES Permit); Ex. 3 (Inland Empire NPDES Permit); Ex. 4 (Midnite Mine Authorization).	27 Plaintiff does not dispute that 28 Kaiser Aluminum and Inland Empire Paper discharge into the Spokane River pursuant to an individual NPDES permit; both permits list “Spokane River” as the receiving water body. However, Dawn Mining Company’s permit lists “Spokane Arm of Lake Roosevelt” as the receiving water. ECF No. 528-4 at 2.
29 3. Washington State issued 30 the Industrial Stormwater 31 General Permit (“ISPG 32 NPDES Permit”), which 33 is a “statewide permit that 34 applies to <b>facilities</b> conducting <b>industrial activities</b> that discharge <b>stormwater</b> to a surface 35 waterbody or to a <b>storm sewer</b>	36 Wong Decl., Ex. 5 at 37 p. 1 (ISGP NPDES Permit).	38 Not disputed.

1 2 3	system that drains to a surface waterbody.” (emphasis in original)		
4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28	4. The following non Governmental entities discharge into the Spokane River pursuant to the ISPG NPDES Permit: Earthworks Recycling Inc., Berg Manufacturing Inc., FedEx Ground Spokane, Goodrich Corporation Carbon Products, Inland Northwest Dairies, EZ Loader Boat Trailers Inc., Central Pre Mix Prestress Co., and FedEx Express GEGA.	<i>See generally</i> Wong Decl., Ex. 6 (Earthworks ISGP Letter); Ex. 7 (Berg Manufacturing CNE Exemption Letter); Ex. 8 (FedEx Ground CNE Exemption Letter); Ex. 9 (Goodrich CNE Exemption Letter); Ex. 10 (Inland ISPG NPDES Permit Letter); Ex. 11 (EZ Loader ISPG NPDES Letter); Ex. 12 (Central Pre Mix restress ISPG NPDES Letter); Ex. 13 (FedEx GEGA CNE Exemption Letter).	Disputed. The documents cited by Defendants do not prove that the companies actually discharge into the Spokane River.  Exhibit 6 is a letter noting that Earthworks Recycling Inc is covered under the Industrial Stormwater General Permit. The permit alone does not demonstrate that the company currently discharges into the Spokane River. ECF No. 528-6 at 2.  Exhibit 7 is a letter documenting that Berg Manufacturing, Inc.’s site is eligible for a Conditional No Exposure Exemption, such that it is not required to apply for and obtain a permit. ECF No. 528-7 at 2.  Exhibit 8 is a letter documenting that Fedex Ground Package System, Inc.’s site is eligible for a Conditional No Exposure Exemption, such that it is not required to apply for and obtain a permit. ECF No. 528-8 at 2.

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Exhibit 9 is a letter documenting that Goodrich's site is eligible for a Conditional No Exposure Exemption, such that it is not required to apply for and obtain a permit. ECF No. 528-9 at 2.

Exhibit 10 is a letter noting that Inland Northwest Dairies LLC is covered under the Industrial Stormwater General Permit. The permit alone does not demonstrate that the company currently discharges into the Spokane River. ECF No. 528-10 at 2.

Exhibit 11 is a letter noting that EZ Loader Boat Trailers Inc is covered under the Industrial Stormwater General Permit. The permit alone does not demonstrate that the company currently discharges into the Spokane River. ECF No. 528-11 at 2.

Exhibit 12 is a letter noting that Central Pre Mix Prestress Co. is covered under the Industrial Stormwater General Permit. The permit alone does not demonstrate that the company currently discharges into the Spokane River. ECF No. 528-12 at 2.

Exhibit 13 is a letter documenting that FedEx Express -- GEGA's site is eligible for a Conditional No Exposure Exemption, such that it is not required to apply for and obtain a permit. ECF No. 528-13 at 2.

RESPECTFULLY SUBMITTED this 3 day of March 2020.

By: /s/ Brett Land  
**BARON & BUDD, P.C.**  
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Carla Burke (*admitted Pro Hac Vice*)  
Celeste Evangelisti (*admitted Pro Hac Vice*)  
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*Attorneys for Plaintiff City of Spokane*

## **CERTIFICATE OF SERVICE**

I hereby certify that on March 3, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System which in turn automatically generated a Notice of Electronic Filing (NEF) to all parties in the case who are registered users of the CM/ECF system. The NEF for the foregoing specifically identifies recipients of electronic notice.

By: s/ Brett Land  
Brett Land WSBA #53634